

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jorge R. Ortiz, Sr. <i>et al.</i> ,	:	
	:	Civil Action 2:05-cv-761
Plaintiffs	:	
	:	JUDGE GRAHAM
v.	:	Magistrate Judge Abel
	:	
Jefferson County Sheriff's Department,	:	
<i>et al.</i> ,	:	
	:	
Defendants	:	

ORDER

Plaintiffs Jorge R. Ortiz Sr., Carlos R. Ortiz, and Jorge R. Ortiz Jr. bring this action against the Jefferson County Sheriff's Department, the Jefferson County Board of Commissioners, Sheriff Fred Abdala, the "unknown officer in charge of shift," the "unknown Sergeant in charge of shift," and the "unknown deputies who perpetrated false arrest of plaintiff" alleging unlawful arrest and incarceration in violation of 42 U.S.C. §1983.

This matter is before the Court on plaintiffs' June 9, 2006 objection to the Magistrate Judge's May 25, 2006 Order denying their motion to compel (doc. 21) and the Magistrate Judge's May 25, 2006 Report and Recommendation recommending that defendants Jefferson County Sheriff's Department, Jefferson County Board of Commissioners, and Sheriff Fred Abdala's March 23, 2006 motion to dismiss plaintiffs' amended complaint (doc. 11) be granted.

Motion to Compel. Plaintiffs seek an order directing the Jefferson County Sheriff's Department to provide plaintiffs with copies of their arrest records and the Dillonvale Court to provide plaintiffs a copy of the arraignment documents and transcripts of all court proceedings. Plaintiffs have not served discovery requests on defendants. They merely assert that at some unspecified time in the past an attorney proceeding on their behalf attempted to obtain copies of the arrest report and other documents from the Jefferson County Sheriff's Department. If plaintiffs wanted discovery in this case, they should have served their discovery requests made pursuant to Rules 26-37 of the Federal Rules of Civil Procedure on defendants' counsel.

Consequently, plaintiffs' June 9, 2006 objection to the Magistrate Judge's May 25, 2006 Order denying their motion to compel (doc. 21) is OVERRULED.

May 25, 2006 Report and Recommendation. Plaintiffs have not filed any objections to the Magistrate Judge's May 25, 2006 Report and Recommendation recommending that defendants' motion to dismiss be granted with respect to plaintiffs' claim against the Jefferson County Board of Commissioners and Sheriff Abdalla in their official capacities and individual capacities. As required by 28 U.S.C. §636(c), the Court has made a *de novo* review of the Report and Recommendation.

Upon *de novo* review, the Court ADOPTS the Magistrate Judge's May 25, 2006 Report and Recommendation, and defendants Jefferson County Sheriff's Department, Jefferson County Board of Commissioners, and Sheriff Fred Abdala's March 23, 2006 motion to dismiss plaintiffs' amended complaint (doc. 11) is GRANTED.

Plaintiffs' Response to the May 25, 2006 Show Cause Order. The Magistrate Judge issued a show cause order because plaintiffs had failed to file proof of service of the summons and complaint on the "unknown officer in charge of shift," the "unknown Sergeant in charge of shift," and the "unknown deputies who perpetrated false arrest of plaintiff" within 120 days after filing the complaint. On June 9, 2006, plaintiffs reported that they had attempted to serve the unknown defendants, but the summonses and complaint were returned because they could not be served on unknown individuals. Plaintiffs assert that they have been unable to find out the identities of the unknown individuals because they have not been able to obtain copies of their arrest records.

Plaintiffs have failed to file proof of service of the summons and complaint on defendant within 120 days after filing the complaint. Accordingly, the Clerk of Court is DIRECTED to enter JUDGMENT dismissing the "unknown officer in charge of shift," the "unknown Sergeant in charge of shift," and the "unknown deputies who perpetrated false arrest of plaintiffs," without prejudice, under Rule 4(m), Fed. R. Civil. P. for failure to obtain service on defendants.

Conclusion. Plaintiffs' June 9, 2006 objection to the Magistrate Judge's May 25, 2006 Order denying their motion to compel (doc. 21) is OVERRULED. The Court ADOPTS the Magistrate Judge's May 25, 2006 Report and Recommendation, and defendants Jefferson County Sheriff's Department, Jefferson County Board of Commissioners, and Sheriff Fred Abdala's March 23, 2006 motion to dismiss plaintiffs' amended complaint (doc. 11) is GRANTED. The Clerk of Court is DIRECTED to enter JUDGMENT for defendants Jefferson County Sheriff's Department, Jefferson County Board of Commissioners, and

Sheriff Fred Abdala.

Plaintiffs have failed to file proof of service of the summons and complaint on defendant within 120 days after filing the complaint. Accordingly, the Clerk of Court is DIRECTED to enter JUDGMENT dismissing the "unknown officer in charge of shift," the "unknown Sergeant in charge of shift," and the "unknown deputies who perpetrated false arrest of plaintiffs," without prejudice, under Rule 4(m), Fed. R. Civil. P. for failure to obtain service on defendants.

This action is hereby DISMISSED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: August 9, 2006